



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 10, 2004

Ms. Angela M. DeLuca
Assistant City Attorney
The City of College Station
P. O. Box 9960
College Station, Texas 77842

OR2004-4725

Dear Ms. DeLuca:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 203300.

The College Station Police Department (the "department") received a request for a specific offense report. You inform us that the department has withheld Texas driver's license numbers in accordance with the previous determinations issued in Open Records Letter Nos. 2001-5847 (2001) and 2002-2022 (2002). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301). You claim that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

Section 552.108 of the Government Code provides in relevant part:

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a final result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal matter that has concluded in a final result other than a conviction or deferred adjudication. You explain that the submitted information relates to an investigation that concluded without criminal charges being filed. We thus understand you to represent to this office that the investigation of the matter has concluded in a final result other than conviction or deferred adjudication. Based on your representations and our review of the information at issue, we find that the department has established that section 552.108(a)(2) applies to the submitted information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). As such, in most cases, a governmental body that is granted the authority by this office to withhold information based on section 552.108(a)(2) is nevertheless required to release this basic information. In this case, however, release of some portions of the basic information would implicate the common law privacy interests of a person. Therefore, we next address the extent to which any portion of this basic information is excepted from disclosure.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrines of common law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. We have marked the type of information that the department

must withhold from the basic information under section 552.101 in conjunction with the right to common law privacy. The remaining basic information must be released. The department may withhold the remaining submitted information pursuant to section 552.108(a)(2) of the Government Code.

In summary, other than basic information, the department may withhold the submitted records under section 552.108(a)(2). We have marked those portions of the basic information that must be withheld under section 552.101 in conjunction with the common law right to privacy. The department must release the remaining basic information.

You also request that this office issue a previous determination allowing the department to withhold offense reports concerning investigations that did not result in convictions or deferred adjudications under section 552.108 in response to future requests for such information without the necessity of seeking a ruling from this office with regard to such information. We decline to issue such a previous determination at this time.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

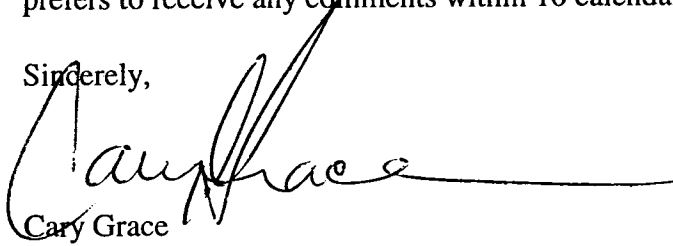
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cary Grace', with a long horizontal flourish extending to the right.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/krl

Ref: ID# 203300

Enc. Submitted documents

c: Mr. Wayne Bates
1500 Harvey
College Station, Texas 77845
(w/o enclosures)